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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-601

BARBARA COREY,

Petitioner,

—v.—

AVCO-LYCOMING DIVISION, AVCO CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

AVCO-LYCOMING DIVISION,
AVCO CORPORATION
Respondent

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BARBARA COREY,

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AVCO-LYCOMING DIVISION, AVCO CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

Avco-Lycoming Division, Avco Corporation, your respondent, hereby opposes petitioner's prayer for a writ of certiorari filed on October 13, 1972 and requests that it be denied.

Opinion Below

The opinion of the Supreme Court of Connecticut is *Corey* v. *Avco Lycoming Div., Avco Corp.*, 34 Conn. L.J. 3 (July 18, 1972) set forth in petitioner's Appendix (Pet. App. 1a-19a).[1]

[1] Except as otherwise indicated (Pet. App.-) refers to petitioner's appendix, (Pet. Brief-) refers to petitioner's brief, and (A-) refers to respondent's appendix attached hereto. Petitioner is sometimes herein referred to as "Mrs. Corey" and respondent is sometimes herein referred to as "Avco".

Questions Presented[1]

1. May questions which have not been presented, argued or considered below be presented by petitioner for the first time in her Petition for Writ of Certiorari?

2. Does a state court decision which held a) that a fair and impartial labor contract arbitration award constituted a bar and estopped a party to such proceeding from relitigating the same issues and b) that there was not sufficient evidence to support petitioner's claim made before the Commission on Human Rights and Opportunities under the state's Fair Employment Practices Act, raise a federal question reviewable by this court?

Statement of Case

The following sets forth the facts as they were presented to and considered by the Supreme Court of the State of Connecticut and as they were set forth in respondent's appendix to its brief before that court. (A-1-15).[2]

The petitioner, Mrs. Barbara Corey was employed by the respondent on September 3, 1968. (Pet. App.-2a) Mrs. Corey had no previous work experience of any kind (A-12), and was hired for the job of rate clerk and assigned to the Traffic Division, Department 2K. The peti-

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[1] For purposes of simplicity, respondent has replied to each of petitioner's points in the order in which she has raised them. The questions presented herein apply, in whole or in part, to each point discussed below.

[2] As is more fully set forth in Point IV below, the petitioner chose not to file an appendix in the Supreme Court of the State of Connecticut.

tioner's scheduled hours of work were 8:15 a.m. to 5:00 p.m., Monday through Friday, which fact was fully explained to her prior to her date of employment. Mrs. Corey made no objection to working these hours at that time. (Pet. App.-2a)

Throughout the period of her employment, Mrs. Corey was being trained as a rate clerk, (A-10) which training was dependent upon the availability of a rate analyst, who instructed her during periods when his own work schedule permitted. (A-11)

Mrs. Corey requested time off at the end of October or beginning of November, a few weeks after the commencement of her employment with Avco and during the course of her training program. (A-13) The petitioner did not at this time request an adjustment in her scheduled hours of work, but demanded time off in order that she could leave the plant early on every Friday for a period of sixteen consecutive weeks.

Mrs. Corey's request for permission to take time off and leave early over the sixteen consecutive week period was denied. (Pet. App.-3a) On Friday afternoon, November 15, 1968, she left the plant approximately 35 minutes before the end of her scheduled shift. (Pet. App.-3a) A discharge hearing was held the following Monday and she was terminated for insubordination and for violation of the Plant Conduct Rules, including Rule 28 (leaving the plant before the end of the shift), Rule 29 (insubordinate conduct and refusal to follow a foreman's orders), and Rule 30 (neglect by an employee of the job duties and refusal to perform work assigned). (A-4)

Subsequently, Mrs. Corey filed a grievance against Avco through the union acting as her exclusive collective bargaining agent in which she alleged that her termination was unjust and discriminatory on religious grounds. Her grievance was filed pursuant to the procedure set forth in the collective bargaining agreement between Avco and petitioner's collective bargaining agent, the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 376. (Pet. App.-4a) Petitioner's grievance was prosecuted by the union with her full cooperation and participation through the steps of the procedure up to and including final and binding arbitration. (Pet. App.-4a)

The Award of the Board of Arbitration (A-2-6), issued on April 29, 1969, was confirmed and enforced in accordance with its terms by the Order of the Superior Court, dated June 5, 1969. Said order was a final judgment which was not appealed.

The Board of Arbitration found, on the basis of sworn testimony, including that of Mrs. Corey, that prior to her termination an Industrial Relations Counselor had discussed with petitioner the possibility of an assignment to a different clerical job with earlier, non-conflicting shift hours of work and that her response thereto had been to indicate a lack of interest in an alternative assignment. (Pet. App.-5a) Moreover, during the course of the arbitration hearing, petitioner reiterated her rejection of another Avco job offer of comparable employment at shift hours which would not conflict with her observance of the Sabbath contained in respondent's letter of March 19, 1969 to petitioner. (Pet. App.-5a)

The Board of Arbitration also found that the proof established that it was the practice of Avco not to accord extended special privileges with respect to hours of work and work assignments to individual employees whether the reason was religious or secular. It went on to find that the granting of a benefit to an individual of the type requested by the petitioner over a period of sixteen consecutive weeks would be considered a violation of the Labor Agreement unless Avco were similarly to grant the request of every other employee who wanted special hours for any reason. (A-4)

The award of the Board of Arbitrators was confirmed pursuant to §52-421 of the Connecticut General Statutes, and such confirmation made the award a final judgment from which no appeal was taken. (Pet. App.-7a) (See: Conn. Gen. Stat. §52-423).

On December 3, 1968, approximately two weeks after initiating her grievance, the petitioner filed her complaint with the Commission on Human Rights and Opportunities pursuant to Title 31-§122 *et seq.* of the Connecticut General Statutes—the Fair Employment Practices Act. Subsequent to the issuance of the Award of the Board of Arbitration, petitioner's complaint was heard before the Hearing Tribunal of the Commission on Human Rights and Opportunities and on August 7, 1969 that Tribunal issued its Decision and Order in favor of the petitioner directing that the petitioner be reinstated with back pay from the date of her discharge. This order was set aside on appeal to the Superior Court, which decision was affirmed by the Supreme Court of the State of Connecticut. (Pet. Brief-3, 4)

INTRODUCTION

No Discrimination Was Shown Nor Found in the Courts Below

There was no evidence of religious discrimination in the courts below, and, indeed, the finding made by the Board of Arbitration and courts alike specifically indicate the absence of any discrimination. The finding of the Board of Arbitration goes even further:

> 7. The grievant's reiteration at the arbitration hearing of her rejection of the company offer of March 19, 1969 (Tr. 87), of comparable employment at shift hours which would not conflict with her religious observance of the Sabbath further confirms the fact that *the Company intent was not discriminatory but rather the opposite.* (emphasis supplied) (A-5)

The Supreme Court of the State of Connecticut, noting the failure of the petitioner's proof of religious discrimination on the facts wrote:

> A careful analysis of the evidence before the hearing tribunal, previously recited in this opinion, serves to confirm the conclusion of the trial court that the findings of the tribunal (religious discrimination) were not supported by substantial and competent evidence. (Pet. App.-12a)

Judge Loiselle, in his concurring opinion in the court below, noted:

> I agree with the second ground of decision—that there is not sufficient evidence to support the conclusion of the Commission on Human Rights and Opportunities—and believe the disposition of this case should be made solely on that ground. (Pet. App. 13a)

The record below shows a complete absence of evidence of religious discrimination and the obvious undue hardship placed upon the Company in any attempt to adjust its schedules to fit those of an individual employee or the petitioner. The Company would be in violation of Article XIII, Section 3 of the labor contract (A-4); it could not maintain an efficient industrial operation (Pet. App.-7a); it would be in violation of its own rules (A-4); and, finally, as found by the Connecticut Supreme Court, it would be economically impossible to adjust itself to the varying schedules of single employees. (Pet. App.-12a)

Despite these facts, Mrs. Corey insists throughout her petition that discrimination exists or at least that this court may hypothetically assume discrimination for the purposes of review. The former position cannot be maintained, as this court has assiduously avoided overruling state court determinations on debatable factual issues, *Hoag* v. *New Jersey*, 356 U.S. 464 (1958); and the latter position cannot be maintained, as it is now axiomatic that this court will not review hypothetical questions. *Asbury Hospital* v. *Cass County, N. D.*, 327 U.S. 207 (1945).

The *sine qua non* of the first three points raised by the petitioner in her brief is this underlying assumption of discrimination. So for example, in Point I, petitioner raises the applicability of federal law to a state court proceeding reviewing a determination of a state agency under state law and the effect of the Supremacy Clause thereon. However, even assuming, *arguendo*, the applicability of federal law (Title VII of the Civil Rights Act of 1964) to state action under its Fair Employment Practices Act, there can be no review of such applicability absent a finding or even a modicum showing of discrimination. The

Federal Act is specifically designed to eliminate discrimination—whether under its aegis (Title 42 U.S.C. §2000e-2) or by deferral to an equivalent state procedure (42 U.S.C. §2000e-5). Where no discrimination is shown, the Act does not become effective and its "supremacy" *vel non* is academic.

The same disability arises in Point II of petitioner's argument. In this section, she states that certiorari should be granted because the Supreme Court of the State of Connecticut misapplied Section 701 of Title VII of the Civil Rights Act of 1964, as amended. As is pointed out below, the Connecticut court did not apply the Act nor did it have reason or occasion to do so. However, assuming, as petitioner does, that there was such an application, there is no reviewable issue presented to this court absent a showing of discrimination. Petitioner claims that the Randolph Amendment is applicable and that its criteria have not been met. However, as is indicated above, the Connecticut court found not only that the employer was unable to accommodate the employee without undue hardship but, in addition, that it was an economic impossibility. Hence, on the facts found, both the criteria set forth in the Randolph Amendment and the applicability of the EEOC guidelines likewise become academic.

Point III concerns itself with the finality and effect of a labor arbitration upon a subsequent action under a state's Fair Employment Practices Act. In the instant case, it was of course found 1) that the Board of Arbitrators had the power to hear the dispute regarding religious discrimination and 2) that Mrs. Corey had consented to and partici-

pated in such hearing.[4] (Pet. App.-4a) Quite apart from this finding, the court also found, as is indicated above, that "a careful analysis of the evidence . . . serves to confirm the conclusion of the trial court that the findings of the tribunal were not supported by substantial and competent evidence." Therefore, irrespective of the effect of the ruling by the Board of Arbitrators, the result must be the same. As there was insufficient evidence before the Hearing Tribunal to support the charge of religious discrimination, the holding by the majority opinion in the court below regarding the binding effect of a prior arbitration award was unnecessary. Hence, even assuming *arguendo* that that issue raises a federal question, the finding of no discrimination precludes a review of that question by this court. If a state court judgment rests upon two grounds, one of which may be federal and other of which is not, the United States Supreme Court does not have jurisdiction if the nonfederal ground is independent of the federal ground and adequate to support the judgment. *Jankovich* v. *Indiana Toll Road Commission,* 379 U.S. 487 (1965).

[4] There was, of course, no question raised by petitioner below that the proceedings below were anything other than fair and impartial and that all procedural due process guarantees were met; nor could such a claim be made. Mrs. Corey was represented by esteemed counsel both in the court below and before the Commission on Human Rights and Opportunities.

POINT I

The issue raised in Point I by petitioner was not raised in the courts below and does not present a federal question as the Supremacy Clause is not applicable.[5]

As petitioner assumes a finding of discrimination, so also does she assume in Point I that "the decision of the Supreme Court is based solely on federal law. . . ." (Pet. Brief at p. 5). In point of fact, the court below did not apply federal law, as their review was of a ruling of a state agency based upon state law. Nevertheless, petitioner argues that the Supremacy Clause of the Constitution of the United States makes Title VII of the Civil Rights Act of 1964 paramount over the Connecticut Fair Employment Practices Act (Conn. Gen. Stat. §31-122 et seq.) as otherwise Congressional action would be frustrated. Nowhere in petitioner's brief before the Supreme Court of Connecticut is there any claim that the Civil Rights Act was applicable to the facts before them. Petitioner's sole reliance was on the Connecticut Fair Employment Practices Act—Chapter 563. (Pet. App.-2a, 4a). Implementation of an act is dependent upon the initiative of an individual to invoke its sanctions; [see: *Nash* v. *Florida Industrial Com.*, 389 U.S. 235 (1967)], and the failure of the petitioner to

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[5] The question presented in Point I of the petition is as follows:

1. Whether the Congressional design of uniform federal standards of discrimination coupled with joint state-federal enforcement of those standards as set forth in Section 706(c) of Title VII of the 1964 Civil Rights Act (as amended), when viewed in light of the supremacy clause, requires that the Connecticut Fair Employment Practices Law be construed as co-extensive with Title VII so as not to frustrate or deny the Federal substantive rights of complainant?

raise Title VII of the Civil Rights Act of 1964 in the court below precludes review of that Act upon a petition for writ of certiorari. *Monks* v. *New Jersey*, 398 U.S. 71 (1970). There is nothing which petitioner has presented to this court, nor is there anything in the opinion below which shows that the question was presented, and where a state court clearly does not rule on a question, it is presumed that it was not properly before it. *Street* v. *New York*, 394 U.S. 576 (1969).

Even more importantly, Title VII of the Civil Rights Act specifically provides for deferral to the state procedure. Petitioner could have filed a complaint under the provisions of the Equal Employment Opportunity Act. Title 42 U.S.C. §2000e-5. While Section 706(b) is designed to give state agencies a prior opportunity to consider discrimination complaints, a person claiming to be aggrieved by a violation of Title VII of the Civil Rights Act of 1964 may still seek redress under the Act if the procedure set out therein is followed. *Love* v. *Pullman*, 30 L. Ed. 2d 179 (1972). But petitioner made no attempt to assert any right she may have had under that Act, and instead seeks to have this court review hypothetical questions construing its effect in *vacuo*. Apparently, petitioner seeks to have this court rule that all state agencies defer to the Equal Employment Opportunity Commission under the guise of "cooperative federalism" despite Congress' clear intent to the contrary.

Petitioner admits at page eight (8) of her brief that the Connecticut Commission on Human Rights and Opportunities meets the standards set forth in the Act (Title VII §706(c) as amended) requiring deferral to the state agency. However, she argues that where a claimant under a state act fails in her proof, the state act immediately becomes "in-

valid and void" because the state decision somehow or other frustrates federal law. Hence, petitioner assumes, without ever having utilized its provisions, that a determination under Title VII must be different from that under the state act. [But see: *Dewey* v. *Reynolds Metal Co.*, 429 F. 2d 324 (6th Cir. 1970) aff'd, 402 U.S. 689]. In sum, even had petitioner raised the question, there is no indication in the record that federal law has been frustrated or that the state law stands as an obstacle to the objectives of Congress. Furthermore, it is clear that Title VII is not a Congressional filibuster silencing the states in this area. The exact opposite is the case. As petitioner admits at page 8 of her brief, "it is clear that Congress did not wish to preempt state agencies in this field. . . . " As such, petitioner's reliance upon Title VII and the Supremacy Clause is singularly inappropriate.

POINT II

The issue presented in Point II by petitioner was not raised below.[*]

The second question raised by the petitioner has the same disabilities as the first. She states that certiorari should be granted because the Supreme Court of the State of Con-

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[*] The question presented in Point II of the petition is as follows:

2. Whether the Connecticut Supreme Court erred by ruling that under Dewey v. Reynolds Metal Co., 429 F.2d 324 (6th Cir. 1970), aff'd, an employer has no duty to accommodate an employee's religious belief, when the Federal Standard as expressed in the Equal Employment Opportunity Commission's Guidelines on Religious Discrimination 32 Fed. Reg. 10298, and the recent enactment thereof into law by Congress in the Equal Employment Opportunity Act of 1972 requires reasonable accommodation, and thereby violated the Supremacy Clause of the United States Constitution?

necticut misapplied Section 701 of Title VII of the Civil Rights Act of 1964, as amended. To misapply is to apply wrongly, but, in point of fact the court below did not apply the Act nor did it have reason or occasion to do so. The two grounds upon which the court below rested its opinion were 1) the finality and binding effect of the prior arbitration award and 2) the insufficiency of the proof presented by the petitioner. In reaching these conclusions, there was neither reliance nor application of Section 701 of Title VII of the 1964 Civil Rights Act as amended, as it was never raised. Indeed, any application of the Act would have been singularly inappropriate to the questions before the Connecticut courts.

Nevertheless, petitioner asserts that the court below should have applied the Randolph Amendment to the facts before it. The Randolph Amendment was adopted on March 24, 1972 after the submission of briefs and oral argument before the Connecticut Supreme Court. Mrs. Corey's discharge was on November 19, 1968, more than three years prior to the adoption of the Randolph Amendment. The award by the Board of Arbitrators was made on April 28, 1969, and the hearing before the Commission on Human Rights and Opportunities was held on May 7, 1969, both slightly less than three years before the effective date of the amendment. As the Randolph Amendment was not in effect on the date of discharge or during any stage of the proceedings below, it may not now be relied upon by petitioner. *Dewey* v. *Reynolds Metal Company,* 429 F. 2d 324 (6th Cir. 1970) at page 329.

Notwithstanding the inapplicability of the amendment, it is clear from the recital set forth in the introduction above that there were steps taken to accommodate the petitioner

and that the petitioner refused such accommodation. It is equally clear that it would not merely be an undue hardship of the type referred to in the Randolph Amendment but an economic impossibility for a company such as Avco to adjust its schedules to meet those of individuals in general and the petitioner in particular. Hence, the court below applied a similar, if not stronger, test than the Randolph Amendment may now require in Title VII claims made after March of 1972.

Quite apart from the substantive error of petitioner's claim relating to the Randolph Amendment, it would not, in any event, be applicable to a state court's review of a state agency proceeding. While a state court could, and most likely would, look at analogous federal and sister state statutes and the rulings thereon (as did the court below), those statutes and rulings are instructive—not binding.

In sum, the petitioner's second issue is not even remotely connected with the proceedings below and is hypothetical in nature. This court has consistently refused to review such questions. *Asbury Hospital* v. *Cass County,* 326 U.S. 207 (1945); *Congress of Industrial Organizations* v. *McAdory,* 325 U.S. 472 (1944); *McDonald* v. *Oregon R. & Nav. Co.,* 233 U.S. 665 (1914).

POINT III

The issues raised by petitioner in Point III do not raise a federal question and have been foreclosed by prior decisions.[7]

The argument made by petitioner in Point III presents two separate issues. On the one hand, she argues that this court should grant certiorari by reason of the Connecticut Supreme Court's holding "that a prior arbitration constitutes collateral estoppel and/or res judicata on a subsequent action under a fair employment practices statute." (Pet. Brief—14) On the other hand, she argues that there is division among the circuits on the issue of whether prior arbitration should or should not be binding upon subsequent Title VII type relief.

The first proposition does not of course raise a federal question, and the second is merely an attempt to manufacture a federal question by wrongly assuming that Title VII of the Civil Rights Act of 1964 is applicable. What is or is not a final judgment for the purpose of *res judicata* is a matter of state law and, standing alone, presents no federal question. *The City and County of San Francisco* v. *Itsell*, 133 U.S. 65 (1890). Principles of finality are, within the broad limits of fundamental fairness, solely a state con-

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[7] The question presented in Point III of the petition is as follows:

3. Whether the Connecticut Supreme Court, by ruling that a prior arbitrator's award constituted res judicata and/or collateral estoppel as to Plaintiff's claim of religious dicrimination, frustrated enforcement at the state level of the national policy against discrimination as expressed in Title VII of the 1964 Civil Rights Act (as amended) and made mandatory on the states by the Supremacy Clause of the United States Constitution?

cern; *Konigsberg* v. *State Bar of California*, 366 U.S. 36 (1961), and Connecticut, like many jurisdictions, has held that a decision by an arbitrator consented to by the parties and confirmed by order of the Superior Court is a final determination from which an appeal may be had. (Pet. App. —7a-11a) That other jurisdictions may differ on a non-federal question does not give rise to relief in this court, as the doctrines of estoppel and *res judicata* do not raise federal questions. *Leonard* v. *Vicksburg, S.&P.R. Co.*, 198 U.S. 416 (1905).

Petitioner seeks to remove the obstacle by characterizing the problem as a conflict between two Goliaths of national policy—the encouragement and protection of arbitration and the elimination of discriminatory practices in employment. There is, of course, no such conflict in the case before the court. There was no discrimination found or shown, and there was no claim made under Title VII of the Civil Rights Act.

What petitioner seeks is to have this court once again review the holding made in *Dewey* v. *Reynolds Metal Co.*, 429 F.2d 324 (6th Cir. 1970) affirmed by an equally divided court in 402 U.S. 689 (1971). Unlike the present case, *Dewey* involved an action brought under the provisions of Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000 (e)) which presented a federal question. However, *Dewey* also held that where the parties consent to arbitration and the issue of an alleged violation of civil rights is submitted at the arbitration hearing, then the arbitrator's decision thereon is final and binding. Any other result, the court wrote, "would bring about the death knell to arbitration of labor disputes, which has been so usefully employed in their settlement." As has been pointed out above,

a state court determination of the requisites of the finality proceedings in its courts does not raise a federal question. It is a matter of general law. *Northern Pacific R. Co.* v. *Ellis*, 144 U.S. 458 (1892).

Even assuming that Mrs. Corey had made a claim under the Civil Rights Act, the result would be no different, and on this point the circuits are unanimous. In *Rios* v. *Reynolds Metal Co.*, 5 F.E.P. 1 (5th Cir. 1972), the court wrote:

> II. The settlement of labor disputes by arbitration is a favored national labor policy. See, e.g., *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 1970, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199, 74 LRRM 2257; *United Steelworkers of America* v. *American Manufacturing Co.*, 1960, 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403, 46 LRRM 2414; *United Steelworkers of America* v. *Enterprise Wheel and Car Corp.*, 1960, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424, 46 LRRM 2423; *United Steelworkers of America* v. *Warrior and Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409, 46 LRRM 2416;
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> • • • • •
>
> We conclude that the policy which favors arbitration and the remedial policy of Title VII may be accommodated by a procedure which was alluded to in Hutchings but saved for decision on another day. It is that a district court may, under limited circumstances, defer to a prior arbitration award.
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> • • • • •
>
> First, there may be no deference to the decision of the arbitrator unless the contractual right coincides with rights under Title VII. Second, it must be plain that the arbitrator's decision is in no way violative of the private rights guaranteed by Title VII, nor of the public policy which inheres in Title VII. In addition, before deferring, the district court must be satis-

fied that (1) the factual issues before it are identical to those decided by the arbitrator; (2) the arbitrator had power under the collective agreement to decide the ultimate issue of discrimination; (3) the evidence presented at the arbitral hearing dealt adequately with all factual issues; (4) the arbitrator actually decided the factual issues presented to the court; (5) the arbitration proceeding was fair and regular and free of procedural infirmities. The burden of proof in establishing these conditions of limitation will be upon the respondent as distinguished from the claimant.

The Fifth Circuit now recognizes that, in certain instances, deferral to arbitration is proper. The standards set forth by the court in its opinion are all present in the case before this court. The factual issues before the Board of Arbitrators were the same as before the Hearing Tribunal; the Arbitration Board had the power to hear the issues under the agreement; the evidence presented before it dealt adequately with all the factual issues and those issues were actually decided; and, finally, the arbitration proceeding was fair and free of procedural infirmities. Hence, even the Fifth Circuit would recognize that, had the present case been a Title VII request for relief, deferral to arbitration would have been proper.

In harmony with the Fifth Circuit are the Tenth Circuit[8] and the Sixth Circuit.[9] Hence, in reality what petitioner seeks is not a review of the instant case but a second look at *Dewey* recently decided by this court and followed on such facts as are presented here by all courts. This

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[8] *Alexander* v. *Gardner-Denver Co.*, 4 F.E.P. Case 1210 (10th Cir. 1972) aff'g 4 F.E.P. Cases 1205 (D.C. Colo.).

[9] *Dewey* v. *Reynolds Metal Co.*, 429 F.2d 324 (6th Cir. 1970) aff'd by an equally divided court 402 U.S. 689.

issue, even if it were applicable to the present case, has been effectively foreclosed and should not be reviewed again.

POINT IV

Petitioner's argument in Point IV was not raised below and does not present a federal question.

Point IV of plaintiff's brief presents a general constitutional attack upon the appellate rules of the Supreme Court of the State of Connecticut claiming in substance that the rules violate the fundamental guarantees of due process protected by the 14th Amendment of the United States Constitution.[10] This type of general attack is, in and of itself, sufficient grounds for denying the petition. Rule 23(4)—Rules of the Supreme Court of the United States. *Galveston Causeway Const. Co.* v. *Galveston H. & S.A. Ry. Co.*, 262 U.S. 747 (1923). Petitioner had no more regard for the rules of practice in the court below. Despite the clear language of §31-128(c) of the Connecticut General Statutes requiring that "an appeal be taken and prosecuted in the same manner and form and with the same effect as in other cases of appeal . . . ," the petitioner chose to ignore the requirements of Sections 645 and 715 *et seq.* of the Rules for the Connecticut Supreme Court and failed to file an appendix to her brief. As with the other points mentioned above, there was no attempt in the court below to raise the issue that the requirements of the local rules violated due process requirements. Furthermore, the rules attacked have the force of statute, *In re Application of*

[10] Petitioner's claim in this regard has no bearing upon the substantive issues between Mrs. Corey and Avco and is one which might more properly be defended by the Attorney General's Office of the State of Connecticut. (see: Conn. Gen. Stat. §3-125)

Dodd, 132 Conn. 237 (1945), and this court has held that it will not pass upon the constitutionality of a state statute until the state court has had a chance to rule on it. *Adler* v. *Board of Ed. of the City of New York*, 342 U.S. 485 (1952).

The petitioner's claim in this regard is a patent attempt to cure her own errors by assigning constitutional deficiencies to rules which her counsel either refused or through inadvertency failed to follow. Such a claim is clearly frivolous and is certainly not supported by the cases cited which are inapposite.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Proceedings Before the Hearing Tribunal of the Commission on Human Rights and Opportunities, May 6, 1969:

ENTERED IN EVIDENCE before the Hearing Tribunal as Respondent's Exhibit #2 (Tr. 81), is the complete text of the Collective Bargaining Agreement between Avco-Lycoming Division, Avco Corporation and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW-AFL-CIO) and its Local 376, which Agreement is dated August 4, 1967, and provides, in pertinent part:

> "A grievance is a difference of opinion between the Company and the Union or an employee involving the interpretation or application of the terms of this Agreement. Nothing herein shall be interpreted as denying an employee the right to present his grievance directly to Management as provided in the Labor-Management Relations Act of 1947, as amended. The Union's as well as the employee's rights and benefits are set forth herein and, accordingly, where a grievance may be a proper subject for arbitration neither the Union nor the employees shall have other recourses, rights or remedies outside the provisions of the Agreement contained herein."
>
> Article IV, Section 1, pp. 3-4

> "The Board of Arbitration, when fully constituted, shall proceed to consider the grievance without delay and shall render its decision promptly following the conclusion of its taking evidence in the matter. The majority decision of the Board of Arbitration shall be final and binding upon the Company and the Union."
>
> Article XIII, Section 3, p. 31
> 4(d), p. 6

"Neither the Company nor the Union shall discriminate against any employee on account of race, creed, sex or national origin."

Article VIII, Section 3, p. 31

ENTERED IN EVIDENCE before the Hearing Tribunal as Respondent's Exhibit #3 (Tr. 91), is the complete text of a duly executed ARBITRATION AWARD made by a Voluntary Labor Arbitration Tribunal appointed under the auspices of the American Arbitration Association pursuant to the grievance and arbitration procedure contained in Article IV of the Collective Bargaining Agreement between the defendant-appellee, the Avco-Lycoming Division, Avco Corporation and Local Union 376 of the U.A.W., plaintiff-appellant's exclusive collective bargaining agent. The uncontested findings of fact and law are contained in the following text of the arbitration award, and were confirmed and enforced after a full hearing and argument by a Judgment entered by the Superior Court of Fairfield County, on June 5, 1969, by the Hon. James P. Doherty from which no appeal was taken:

"AMERICAN ARBITRATION ASSOCIATION
Voluntary Labor Arbitration Tribunal
In the Matter of the Arbitration

—Between—

LOCAL 376, U.A.W.

—and—

AVCO LYCOMING DIVISION, AVCO CORP.
Case Number: 12 30 0040 69

EXHIBIT 3

AWARD

The undersigned, constituting the Board of Arbitration, having duly heard the proofs, allegations and contentions of the parties, and after due consideration and deliberation

with respect thereto hereby find, decide, determine and render the following

AWARD:

1. The grievant, Barbara Corey, was hired on September 3, 1968, and assigned to the job of Rate Clerk—Office in Department 2K. Her hours of work were 8:15 A.M. to 5:00 P.M. Monday through Friday. They were explained to her during her employment interview and were accepted by her without protest. (Tr. 15, 126)

2. Subsequently, however, some two months later, in late October and in early November, the grievant advised various members of management that she desired to leave work early prior to the end of her scheduled shift on each Friday for a sixteen (16) consecutive week period, according to a set schedule, so that she might observe her religion's tenets with respect to the Sabbath. (Tr. 18, 19, 74)

3. The Company declined to modify the shift hours on the job occupied by her in Department 2K on the ground that it would constitute the according of a special privilege to the grievant. (Tr. 19, 20, 74) The possibility of a different clerical job assignment with earlier non-conflicting shift hours of work was broached during an interview between the grievant and an Industrial Relations Counselor. However, the grievant evidenced no interest therein at that time. (Tr. 127)

4. Notwithstanding the denial of permission to leave early on Friday the grievant left the plant prior to her scheduled quitting time on November 15, 1968. (Tr. 79) During her absence it would be necessary to have her work performed by employees in other job classi-

fications at a higher rate of pay or leave it undone. (Tr. 69) A discharge hearing was held on November 18, 1968, the next succeeding work day, and the grievant was terminated for violations of various Plant Conduct Rules, including Rule #28 (leaving the plant before the end of the shift), Rule #29 (Insubordinate conduct or refusal to follow a foreman's orders) and Rule #30 (Neglect by an employee of his job duties or refusal to perform work assigned). (Co. Ex. 3) The Rules have been in effect since 1952, are posted in the plant, were known to the grievant (Tr. 78) and are reasonable exercises of the Company's rule making prerogative. A grievance was timely filed on behalf of the grievant by the Union and processed through the steps of the procedure contained in Article IV of the Labor Agreement.

5. The proof establishes it to be the practice not to accord extended special privilege with respect to hours of work and work assignments to individual employees whether the reason proposed for the requested privilege was religious or secular (as in the case of requests for special accommodations to meet outside school, babysitting, transportation, and family obligations. (Tr. 154) It is clear from the cross examination of Union witnesses as well as the testimony of Company witnesses that the granting of a benefit to an individual of the type requested here over a period of sixteen (16) consecutive weeks would constitute a violation of the Article XIII, Section 3, prohibition on discrimination, negotiated and agreed to by the Company and the Union acting in its capacity as statutory bargaining agent for all of the members of the bar-

gaining unit, unless the Company were similarly to oblige every other employee who requested special hours for any reason. (See, for example, Tr. 117, 120) To put it another way, since the Company does not intend to accommodate itself to individual schedules, as indeed it could not if it desires to continue to maintain an efficient industrial operation, it cannot accede to grievant's request in this instance without itself being in violation of the cited Collective Bargaining Agreement proviso. The grievant has no right or entitlement to request the Company so to act.

6. A review of the matter cited by grievant in her complaint to the Connecticut Commission on Human Rights and Opportunities (Co. Ex. 4), the EEOC guidelines and opinions issued under Title VII of the Civil Rights Act which were cited and discussed by the advocates of the Parties during oral argument herein (Tr. 143-145), and the awards of other arbitrators who have been presented with similar special schedule accommodation requests, support the validity of the foregoing conclusion and do not operate to render nugatory the requirement that employees, regardless of race, creed, sex or national origin must obey the uniformly enforced rules with respect to work schedules.

7. The grievant's reiteration at the arbitration hearing of her rejection of the Company offer of March 19, 1969 (Tr. 87), of comparable employment at shift hours which would not conflict with her religious observance of the Sabbath further confirms the fact that the Company intent was not discriminatory but rather the opposite.

8. The discharge of the grievant was for just and sufficient cause.

Accordingly, under the circumstances of this case referred to hereinabove, the grievance hereby is, in all respects, denied; and the action of the Company in terminating the grievant should be and hereby is fully sustained and confirmed.

Dated: April 28, 1969

BURTON B. TURKUS
Burton B. Turkus,
Chairman

EDWARD S. GEE
Edward S. Gee,
Union Member of Board,
Dissenting

JOHN J. ARNOLD
John J. Arnold, Company
Member of Board,
Concurring

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this day of April, 1969 before me personally came and appeared BURTON B. TURKUS, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

CLAIRE HELLERSTEIN
Notary Public

CLAIRE HELLERSTEIN
NOTARY PUBLIC, State of New York
No. 24-1749060
Qualified in Kings County
Commission Expires March 30, 1971

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD } ss.:

On this 20 day of May, 1969 before me personally came and appeared JOHN J. ARNOLD, EDWARD S. GEE, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they acknowledged to me that they executed the same.

SAGNELLA
Notary Public
(Notarial
Seal)"

The following Judgment and Order of the Superior Court confirming and enforcing in all respects the Award of the Board of Arbitration (hereinabove contained), entered after the hearing before the Hearing Tribunal but prior to its Decision and Order, was brought to the attention of the Hearing Tribunal before the formulation of such Decision and Order, as an Appendix to the Brief of the Defendant-appellee in the proceedings before said Hearing Tribunal. The Court below was also asked to take judicial notice of this Judgment:

"No. 136591

AVCO LYCOMING DIVISION
(Stratford Plant)
AVCO CORPORATION,
vs.
LOCAL 376, U.A.W.

Superior Court,
Fairfield County,
(At Bridgeport)
June 5, 1969.

PRESENT: HON. JAMES P. DOHERTY

Judgment

This action, an application for confirmation of an award, came to this Court on May 27, 1969, when it was ordered that the same be heard at the Courthouse in Bridgeport on the 5th day of June, 1969, at 10:00 o'clock in the forenoon and that the plaintiff caused the defendant to be summoned to appear at said time and to show cause, if any there was, why said application should not be granted, which summons was duly served, as appears from the officer's return on file; and the action came thence to this day, when the parties appeared and were fully heard.

The Court finds that said award should be and it is hereby confirmed and ordered enforced in accordance with its terms and in all respects.

By The Court,
C. David Munich,
Asst. Clerk.

"No. 136591

Avco Lycoming Division (Stratford Plant)	Superior Court, Fairfield County, (At Bridgeport) June 5, 1969.
vs.	
Local 376, U.A.W.	

Order Re Application For Confirmation Of Arbitration Award

In the above-entitled case it is hereby Ordered that the Award be confirmed and enforced in accordance with its terms and in all respects and said Award is incorporated herein by reference.

By The Court,
James P. Dohrerty,
Judge"

PASQUALE CIPRIANO, the Assistant Director of Industrial Relations for Avco Lycoming Division, Avco Corporation, called as a witness by Avco, testified on direct examination as follows:

1. That there are three bargaining units at the Stratford plant representing approximately one-half of Avco's employees, including Local 376 of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, of which Mrs. Corey was a member. That there is a collective bargaining agreement between Avco Corporation and Local 376 dated August 4, 1967, which agreement was in effect during the period of time that Mrs. Corey was employed by Avco. (Tr. 79, 80)

2. That Mrs. Corey was employed by Avco on September 3, 1968 and that her employment was terminated on November 18, 1968. That following the termination of her employment Mrs. Corey filed a grievance under and pursuant to the terms of the collective bargaining agreement and that said grievance was processed through arbitration by Local 376 which was certified by the National Labor Relations Board to be the collective bargaining agent for the members of the collective bargaining unit to which Mrs. Corey belonged. (Tr. 81, 82)

3. That pursuant to the provisions of Article IV of the collective bargaining agreement, a hearing was held before the Board of Arbitration on Mrs. Corey's grievance on March 27, 1969, during which Mrs. Corey testified as a witness in her own behalf. That following the hearing on March 27, 1969, the Board of Arbitration issued its Award, which Award was

dated April 28, 1969, and documented as American Arbitration case number 12 30 0040 69. (Tr. 84, 85, 86) (The complete text of said Award is hereinabove contained).

4. That the hours of work in department 2K during October and November, 1968 were 8:15 a.m. until 5:00 p.m. That Mrs. Corey was the only employee in department 2K assigned to the job classification of rate clerk. (Tr. 93, 94)

5. That Avco Corporation sent a letter dated March 19, 1969 to Mrs. Corey regarding an offer of employment as a Crib Control Clerk in Department 19 S. (Tr. 101, 107, 108)

On *cross-examination* this witness testified as follows:

6. That during the grievance proceedings under the terms of the contract between Avco and Local 376, U. A. W., Mrs. Corey was represented by a union representative of Local 376, U. A. W. (Tr. 114)

7. That those Jewish employees of Avco that are members of a bargaining unit are not generally permitted to take time off to observe Rosh Hashana because the bargaining agreement sets forth only specific holidays. Some of such employees may be given the time off without pay, but this is a decision within the discretion of individual departmental supervisors. (Tr. 117)

8. That Yom Kippur is not a listed holiday for employees in the bargaining unit. (Tr. 117)

9. That since Mrs. Corey was still in the midst of the training process up to the termination of her employ-

ment with Avco, and that she still required and did receive considerable supervision, she was not permitted to adjust her scheduled hours of work; that since Mrs. Corey was the only rate clerk in her department she received different substantive training than any other employee in her department. (Tr. 119, 120, 121)

10. That the letter from Avco to Mrs. Corey dated March 19, 1969, reaffirmed the job offer which had been made to Mrs. Corey by Mrs. Stoddard in the plant. (Tr. 122)

11. That the job referred to in the letter of March 19, 1969, was for a Crib Control Clerk in Department 19 S. (Tr. 123)

12. That from time to time employees of various religious beliefs request time off for religious holidays and Avco accedes to such requests upon occasion, but such requests are very, very irregular and not for the same day for a period of sixteen weeks. (Tr. 126)

On *redirect examination* this witness testified as follows:

13. That during the period of her employment Mrs. Corey had one day off with pay for personal reasons; that when an employee takes an occasional day off for personal reasons the Company would not always know if the time off in fact was taken for a religious observance. (Tr. 137, 138)

14. That there was no one working in Department 2K prior to 8:15 a.m. (Tr. 142)

15. That Mrs. Corey's training was dependent upon the rate analyst for supervision; that rate analysts were

not available at all times during the day because they had other responsibilities to perform. (Tr. 146)

On *recross-examination* this witness testified as follows:

16. That the need for Mrs. Corey to be present until 5:00 p.m. every day was the same need that existed for other employees to be available in the event anything had to be done. (Tr. 147)

On *redirect examination* this witness testified as follows:

17. That during Mrs. Corey's absence from Department 2K her work and duties were performed by a rate analyst who was in a higher job classification and was paid more than Mrs. Corey. (Tr. 150, 151)

On *recross-examination* this witness testified as follows:

18. That the rate analyst who did Mrs. Corey's work also performed this job during her illness and on the Friday afternoon that Mrs. Corey left early in contravention of company orders. (Tr. 151)

Barbara L. Corey, the plaintiff in these proceedings, called as a witness by the Commission, testified on direct examination as follows:

1. That prior to seeking employment with Avco-Lycoming Division, Avco Corporation, in August, 1968, she had no previous work experience. (Tr. 15)

2. That she was applying to Avco for her first full-time job; that the job application and interview were made on the same day and that she was interviewed by Mr. Tigano in the Traffic Department. (Tr. 18, 19)

3. That she applied for a job as a rate clerk and was assigned the job of rate clerk in the Traffic Department. (Tr. 21)

4. That she was told her scheduled hours of work were from 8:15 a.m. until 5:00 p.m. on the day she was employed. (Tr. 25)

5. That she worked from September, 1968, until November, 1968, during which time she was in the hospital one week and had taken one day off for personal business. (Tr. 28)

6. That in late October Mrs. Corey went to see Mr. Marfiak, the Manager of the Traffic Department, and told him that she was a Seventh Day Adventist and that she would require time off; that Mr. Marfiak indicated she could not have the time off requested. (Tr. 28, 29, 30)

7. That subsequent to her initial interview with Mr. Marfiak she was advised to see Mrs. Stoddard concerning a job on an earlier shift. (Tr. 30)

8. That she was in the hospital from November 4 to November 9, 1968 and returned to work on November 10, 1968; that on Friday, November 15, 1968 the sun set before 5:00 p.m.; that she again informed Mr. Marfiak of her necessity of leaving early, about 4:45 p.m.; that Mr. Marfiak denied her permission to leave the plant early, but, nevertheless, she left the plant even earlier than requested at about 4:25 p.m. on Friday, November 15, 1968. (Tr. 31, 32, 33, 34)

9. That she was terminated from her employment on the following Monday at a meeting with Mr. Marfiak,

two Union stewards and two other men for insubordination. (Tr. 35)

10. That she had taken a Massachusetts calendar to Mr. Marfiak to show him the time she wished to leave the plant. (Tr. 38)

11. That Mrs. Stoddard attempted to find her a comparable job with earlier hours. (Tr. 42)

On *cross-examination* this witness testified as follows:

12. That other then baptismal rules and the Bible, there are no published set of rules to be followed by Seventh Day Adventists and that whether a particular activity is work is determined by each person's individual interpretation of what the Bible says. (Tr. 44, 46)

13. That subsequent to her discharge hearing on November 18, 1968, she immediately filed a grievance pursuant to the grievance procedure at the plant alleging that her termination and discharge was unjust; that she was a member of Local 376, U. A. W.; that the Union represented her throughout the grievance procedures; and that the basis for the grievance was her allegation of discrimination on account of her religion. (Tr. 47)

14. That her grievance was presented before the Board of Arbitration on March 27, 1969; that she was represented by the Union throughout the proceedings and testified as a witness. (Tr. 48)

15. That she worked in Department 2K under Mr. Tigano and Mr. Marfiak; that during the course of her employment she was being trained by Mr. Tigano

and a rate analyst whose hours of work were from 8:15 a.m. to 5:00 p.m. (Tr. 49)

16. That she was told what the hours of work were in Department 2K by the secretary on the day of her job interview and that she did not object at that time to these hours of work. (Tr. 53)

17. That between September and November of 1968 she took one day off for personal reasons and she was out for one week because of illness. (Tr. 54)

18. That in contrast to her earlier testimony before the Hearing Tribunal that Mrs. Stoddard told her there was no job available on an earlier shift, she admitted testifying, before the Board of Arbitration, that Mrs. Stoddard had advised her there was shop work available on an earlier shift. (Tr. 54)

19. That the list of sunset times that she presented to Mr. Marfiak indicating the times by which she wished to be out of the plant were actually taken from a Massachusetts newspaper and represented a timetable for sundown in Massachusetts, not Connecticut. (Tr. 55-61)

20. That the passage from Exodus 120 is the basis for her Sabbath belief and is the only written publication of the rule regarding the observance of the Sabbath other than the baptismal card that she signed when she joined the church. (Tr. 68, 69)

21. That other than the Bible there is no written publication or written rule of her church or any official word as to what constitutes work on the Sabbath and what does not constitute work on the Sabbath. (Tr. 72, 73)

Connecticut General Statute § 3–125

§ 3–125. DUTIES OF ATTORNEY GENERAL; DEPUTY; ASSISTANTS

The attorney general shall appoint a deputy, who shall be sworn to the faithful discharge of his duties and shall perform all the duties of the attorney general in case of his sickness or absence. He shall appoint such other assistants as he deems necessary, subject to the approval of the governor. The attorney general shall have general supervision over all legal matters in which the state is an interested party, except those legal matters over which prosecuting officers have direction. He shall appear for the state, the governor, the lieutenant governor, the secretary, the treasurer and the comptroller, and for all heads of departments and state boards, commissioners, agents, inspectors, committees, auditors, chemists, directors, harbor masters and institutions and for the state librarian in all suits and other civil proceedings, except upon criminal recognizances and bail bonds, in which the state is a party or is interested, or in which the official acts and doings of said officers are called in question in any court or other tribunal, as the duties of his office require; and all such suits shall be conducted by him or under his direction.

Rules for the Supreme Court of Connecticut §§ 645, 715, 716

Sec. 645. ——EVIDENCE NOT TO BE PRINTED IN RECORD

Evidence of witnesses before a court, including evidence necessary upon an appeal from the denial of a motion to set aside a nonsuit, evidence taken before a committee or state referee and filed in court in connection with exceptions to a report, and, except as hereinafter provided, evidence taken before an administrative officer or board and filed in court in connection with a petition or an appeal or admitted at the hearing shall not be printed in the record except as it is made a part of a pleading, or of a finding or report in explanation of a ruling made in the course of the hearing, but it may be presented in an appendix to a brief as hereinafter provided. The printing of evidence taken before a zoning board of appeals or zoning commission shall be governed by Sec. 647, and the printing of evidence contained in exhibits annexed to pleadings shall be governed by Sec. 673. (P. B. 1951, Sec. 415; 1963.)

Sec. 715. EVIDENCE PRINTED IN APPENDICES

Sec. 716. ——IN GENERAL

Except as provided in Secs. 645, 646 or 647, any portion of a transcript of evidence filed pursuant to Sec. 641, or, in an appeal from a zoning board of appeals or a zoning commission, any portion of the record before the board or commission which was returned to the trial court but not included in the printed record, shall, if a party desires to present it to the court, be printed, and only printed, in an appendix to the brief. Only evidence material to the issues shall be printed. (P. B. 1951, Sec. 447.)

Title 42 U.S.C. § 2000e-5(a)(b)(c)(d)

§ 2000e–5. ENFORCEMENT PROVISIONS—CHARGES BY PERSONS AGGRIEVED OR MEMBER OF COMMISSION; COPY OF CHARGES TO RESPONDENTS; INVESTIGATION OF CHARGES; CONFERENCE, CONCILIATION, AND PERSUASION FOR ELIMINATION OF UNLAWFUL PRACTICES; PROHIBITED DISCLOSURES; USE OF EVIDENCE IN SUBSEQUENT PROCEEDINGS; PENALTIES

(a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this subchapter has occurred (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty

of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

STATE OR LOCAL ENFORCEMENT PROCEEDINGS; NOTIFICATION OF STATE OR LOCAL AUTHORITY; TIME FOR FILING CHARGES WITH COMMISSION; COMMENCEMENT OF PROCEEDINGS

(b) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

SAME; NOTIFICATION OF STATE OR LOCAL AUTHORITY; TIME FOR ACTION ON CHARGES BY COMMISSION

(c) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice oc-

curring in a State or political subdivision of a State, which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

TIME FOR FILING CHARGES AFTER OCCURRENCE OF UNLAWFUL PRACTICES OR TERMINATION OF STATE OR LOCAL ENFORCEMENT PROCEEDINGS; FILING OF CHARGES BY COMMISSION WITH STATE OR LOCAL AGENCY

(d) A charge under subsection (a) of this section shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b) of this section, such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.